

IN THE MATTER OF:

## Respondents

- a. Clean Air Act (CAA) § 112, 42 U.S.C. § 7412;
- b. Clean Water Act (CWA) § 311, 33 U.S.C. § 1321;
- c. CWA § 301, 33 U.S.C. § 1311;
- d. CWA § 402, 33 U.S.C. § 1342;
- e. CWA § 307, 33 U.S.C. § 1317;

- f. Emergency Planning and Community Right-to-Know Act (EPCRA) § 312, 42 U.S.C. § 11022;
- g. EPCRA § 313, 42 U.S.C. § 11023;
- h. Resource Conservation and Recovery Act (RCRA) § 3002, 42 U.S.C. § 6922; and
- i. RCRA § 3005, 42 U.S.C. § 6925.

3. Hydro submitted an audit report to EPA in July of 2005 and submitted supplemental audit reports in 2006 and 2007. The disclosures for Hydro's sixteen (16) facilities have resulted in a final list of disclosed violations found in Attachments A and B, hereby incorporated by reference.

4. EPA has determined that the violations disclosed by Hydro and listed in Attachment A, satisfy all the conditions set forth in the Audit Policy. Therefore, these violations qualify for a 100% reduction of the gravity component of the civil penalty.

5. EPA has determined that the violations disclosed by Hydro listed in Attachment B, failed to satisfy two conditions of the Audit Policy. These violations do not qualify for Audit Policy mitigation, and Hydro will be assessed a gravity component of the civil penalty for those violations, as well as any applicable economic benefit.

## II. Jurisdiction

6. The Parties agree to the commencement and conclusion of this cause of action by issuance of this Agreement, as prescribed by EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, and more specifically by 40 C.F.R. §§ 22.13 and 22.18(b).

7. Hydro agrees that Complainant has the jurisdiction to bring an administrative action based upon the facts and violations that Hydro disclosed, and for the assessment of civil penalties pursuant to CAA § 113(d), 42 U.S.C. § 7413, CWA § 311(b), 33 U.S.C. § 1321(b), CWA § 309(g), 33 U.S.C. § 1319, RCRA § 3008a, 42 U.S.C. § 6928a, and EPCRA § 325, 42 U.S.C. § 11045.

8. Hydro hereby waives its right to request a judicial or administrative hearing on any issue of law or fact set forth in this Agreement, and its right to seek judicial review of the Final Order accompanying this Agreement.

9. For purposes of this proceeding, Hydro admits that EPA has jurisdiction over the subject matter which is the basis of this Agreement.

10. Section 113(d)(1) of the CAA limits the Administrator's authority to matters where the first alleged date of violation occurred no more than twelve (12) months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

11. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that this matter involving violations older than twelve months is appropriate for an administrative penalty action. Such determination was made on February 9, 2009.

12. Pursuant to RCRA § 3006(b), 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Michigan was granted final authorization to administer the base hazardous waste management program in lieu of the federal hazardous waste management program on October 30, 1986. (See 51 Fed. Reg. 36,804.) New York was granted final authorization for its base program on May 29, 1986. (See 51 Fed. Reg. 17,737.) Kentucky was granted final authorization for its base program on January 30, 1985. (See 50 Fed. Reg. 2,550.) The provisions of these state waste programs, through such authorization, have become requirements of RCRA Subtitle C and are accordingly enforceable by EPA pursuant to RCRA § 3008(a), 42 U.S.C. § 6928(a).

13. EPA sent letters to the states of Arizona, South Carolina, Indiana, Ohio, Missouri, Tennessee, New York, Kentucky, and Michigan providing them with prior notice of this action in accordance with RCRA § 3008(a)(2), 42 U.S.C. § 6928(a)(2), and CWA § 309(b), 33 U.S.C. § 1319(b). In addition, EPA sent letters to the states of Texas, Missouri and Arizona providing them with notice of the CAA § 112, 42 U.S.C. § 7412 violations.

14. Hydro neither admits nor denies the conclusions of law set forth in this Agreement, and this Agreement shall not constitute, or be interpreted or used as an admission of fault, liability, law or fact, nor shall it be admissible in any proceedings as such, except to the limited extent necessary to enforce the provisions of this Agreement, to establish the scope of the release provided herein, or for the purposes of determining whether the facilities covered by this Agreement or any other of Hydro's facilities qualify for future Audit Policy treatment.

### III. Statements of Fact

15. Respondents are Hydro Aluminum North America, Inc., a Maryland corporation, and Hydro Aluminum Precision Tubing North America, LLC, a Delaware company, both wholly owned subsidiaries of Norsk Hydro North America, Inc., a Delaware corporation with an address of 801 International Drive Suite 200, Linthicum, MD 21090.

16. Pursuant to EPA's Audit Policy, Hydro hereby agrees and certifies, with respect to Attachment A of this Agreement, to the following facts upon which this Agreement is based:

- a. the violations were discovered through an audit or through a compliance management system reflecting due diligence;
- b. the violations were discovered voluntarily;
- c. the violations were promptly disclosed to EPA in writing;
- d. the violations were disclosed prior to commencement of an Agency inspection or investigation, notice of a citizen suit, filing of a complaint by a third party, reporting of the violations by a "whistle blower" employee, or imminent discovery by a regulatory agency;
- e. the violations have been corrected and Hydro is, to the best of its knowledge and belief, in full compliance with CAA § 112, 42 U.S.C. § 7412; CWA § 311(j)(1)(C), 33 U.S.C. § 1321(j)(1)(C); CWA § 301, 33 U.S.C. § 1311; CWA § 402, 33 U.S.C. § 1342; EPCRA § 312; 42 U.S.C. § 11022; EPCRA § 313, 42 U.S.C. § 11023; RCRA § 3002, 42 U.S.C. § 6922; RCRA § 3005, 42 U.S.C. § 6925, and the implementing regulations of such Acts, for the violations set forth in Attachment A;
- f. appropriate steps have been taken to prevent a recurrence of the violations;
- g. the specific violations (or closely related violations) identified in Attachment A for a particular facility, have not occurred within three years of the date of disclosure of such violations at each such facility, and have not occurred within five years of the date of such disclosure, as part of a pattern at multiple facilities owned or operated by Hydro. For the purposes of subparagraph g, a violation is:
  - (i) any violation of federal, state, or local environmental law identified in a judicial or administrative order, consent agreement or order, complaint, or notice of violation, conviction or plea agreement; or
  - (ii) any act or omission for which the regulated entity has previously received penalty mitigation from EPA or a state or local agency;
- h. the violations have not resulted in serious actual harm nor presented an imminent and substantial endangerment to human health or the environment, and Hydro did not violate the specific terms of any judicial or administrative Final Order or Agreement; and
- i. Hydro has cooperated as requested by EPA.

17. Hydro certifies and agrees that to the best of its knowledge and belief, it is in full compliance with CWA § 301, 33 U.S.C. § 1311, § 307, 33 U.S.C. § 1317, and § 402, 33 U.S.C. § 1342, and the implementing regulations of such Act, for the violations set forth in Attachment B.

IV. Conclusions of Law for Disclosures Identified  
in Attachment A that Meet All Audit Policy Conditions

CWA Spill Prevention, Control, and Countermeasure (SPCC) Requirements

18. Hydro is a person within the meaning of CWA § 311(a)(7), 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2, and is the owner or operator, as defined by CWA § 311(a)(6), 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the four facilities identified as having SPCC violations in Attachment A (the SPCC Facilities).

19. The SPCC regulations at 40 C.F.R. Part 112, which implement CWA § 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), set forth procedures, methods and requirements to prevent the discharge of oil from non-transportation-related facilities into or upon the navigable waters of the United States, and adjoining shorelines in such quantities that by regulation have been determined may be harmful to the public health, welfare or environment of the United States by owners or operators who are engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil or oil products.

20. Hydro is engaged in storing or consuming oil or oil products at the SPCC Facilities in quantities that may be harmful, as defined by 40 C.F.R. § 110.3.

21. The SPCC Facilities are onshore facilities within the meaning of CWA § 311(a)(10), 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, which, due to their location, could reasonably be expected to discharge oil to a navigable water of the United States, as defined by CWA § 502(7), 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, or its adjoining shoreline, that may either (1) violate applicable water quality standards, or (2) cause a film or sheen or discoloration of the surface of the water or adjoining shorelines, or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

22. Based on the information above, and pursuant to CWA § 311(j)(1)(c) and its implementing regulations, Hydro is subject to the requirements of 40 C.F.R. Part 112 at the SPCC Facilities.

23. Based on the information supplied by Hydro, EPA has determined that Hydro violated the CWA at the SPCC Facilities by failing to prepare and implement an SPCC plan, and to train its employees on the plan as required by CWA § 311(j)(1)(c), 33 U.S.C. § 1321(j)(1)(c), and the implementing regulations found at 40 C.F.R. Part 112, as more fully described in Attachment A.

CWA National Pollutant Discharge Elimination System (NPDES) Storm Water Pollution Prevention Plan (SWPPP) Requirements

24. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

25. Hydro is a person as defined by CWA § 502, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

26. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26 provide that facilities that have storm water discharges associated with industrial activity are point sources subject to NPDES permitting requirements under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

27. Under 40 C.F.R. § 122.26(b)(14), the following category of facilities is among those considered to be engaging in industrial activity for purposes of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b): Secondary Smelting and Refining of Non-Ferrous Metals (SIC Code 3341).

28. Hydro is the owner or operator as defined by 40 C.F.R. § 122.2 of the six facilities identified in Attachment A as having NPDES violations (the NPDES Facilities).

29. The states of Indiana, Missouri, and Ohio have been authorized by EPA to issue Multi-Sector General Permits (MSGP) that include requirements for the management of storm water by industrial users. These permits authorize storm water discharges associated with industrial activity into waters of the United States, including discharges to or through municipal separate storm sewer systems. These discharges must comply with the conditions of the applicable MSGP.

30. Industrial users, such as Hydro, must seek and receive coverage under a state-issued MSGP. As required by the MSGPs applicable here, industrial users must develop and implement a SWPPP, which is designed to reduce storm water discharges, to submit annual operation reports, and to timely submit quarterly monitoring reports.

31. If an industrial user does not have any storm water discharges associated with industrial activities, the state requirements applicable here allow industrial users to submit a No Exposure Certification. Under a No Exposure Certification, an industrial user must notify the appropriate state that industrial materials and activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff.

32. Based on the information provided by Hydro, EPA has determined that Hydro violated the CWA at the NPDES Facilities by failing either (a) to file a No Exposure Certification with

the respective state or (b) to obtain permit coverage, and to develop and implement a SWPPP, to submit annual operation reports, and to timely submit quarterly monitoring reports, as required by CWA § 402(p), 33 U.S.C. § 1342(p), and the implementing regulations found at 40 C.F.R. § 122.26, as more fully described in Attachment A.

#### EPCRA § 312 Reporting Requirements

33. Hydro is a person as defined in EPCRA § 329(7), 42 U.S.C. § 11049(7), and is the owner or operator as defined in EPCRA § 329(4), 42 U.S.C. § 11049(4), of the five facilities listed in Attachment A that have EPCRA § 312 violations (the Tier II Facilities).

34. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370 require the owner or operator of a facility which is required to have a Material Safety Data Sheet for a hazardous chemical under the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651-678, and the regulations promulgated thereunder, to prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370) for chemicals present in excess of certain threshold quantities. The inventory form must contain the information required by those sections, and must be provided to the local emergency planning committee (LEPC), state emergency response coordinator (SERC), and to the fire department with jurisdiction over the facility by March 1, 1988, or March 1 of the first year after the facility first becomes subject to EPCRA § 312 requirements, and annually thereafter.

35. Sulfuric acid and hydrofluoric acid are extremely hazardous substances under EPCRA § 302, 42 U.S.C. § 11002, and Appendix A of 40 C.F.R. Part 355. Hydraulic oil, argon and caustic soda are hazardous chemicals under EPCRA § 312, 42 U.S.C. § 11022, and 40 C.F.R. § 370.66.

36. The reporting threshold for extremely hazardous substances present at a facility is the lesser of five hundred (500) pounds, or the threshold planning quantity (TPQ) as defined in 40 C.F.R. Part 355. Therefore, the reporting threshold for sulfuric acid is five hundred (500) pounds, which is lower than the TPQ, and for hydrofluoric acid the reporting threshold is the TPQ, which is one hundred (100) pounds. As set forth in 40 C.F.R. § 370.10, the reporting threshold for hazardous chemicals present at a facility at any one time during the preceding calendar year is ten thousand (10,000) pounds. Therefore, the reporting threshold for hydraulic oil, argon, and caustic soda is ten thousand (10,000) pounds.

37. The information supplied by Hydro indicates that for varying lengths of time during calendar years 2000-2006, sulfuric acid, hydrofluoric acid, caustic soda, argon and hydraulic oil were present at the Tier II Facilities in excess of the above threshold amounts.

38. Based on the information supplied by Hydro, EPA has determined that Hydro has violated EPCRA § 312(a), 42 U.S.C. § 11022(a), and the regulations found at 40 C.F.R. Part 370

by failing to prepare and submit emergency and chemical inventory forms to the LEPC, the SERC and/or the fire department with jurisdiction over each Tier II Facility, as more fully described in Attachment A.

#### EPCRA § 313 Reporting Requirements

39. EPCRA § 313, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a covered facility to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of EPA and to the State in which the subject facility is located by July 1 for the preceding calendar year. The owner or operator of a covered facility must provide a Form R for each toxic chemical that is manufactured, processed, or otherwise used in quantities exceeding the established threshold during that preceding calendar year if the following conditions are met:

- a. The facility has ten or more full-time employees;
- b. The facility is a covered Standard Industrial Classification (SIC) code, which is defined as follows: major group 10 (except 1011, 1081, 1094); 12 (except 1241); 20-39; 4911, 4931, 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce); 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, Subtitle C, 42 U.S.C. Sections 6921-6939e); 5169; 5171; and 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and
- c. The facility manufactured, processed, or otherwise used a toxic chemical listed under EPCRA § 313(c), 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65, in excess of the threshold quantity established under EPCRA § 313(f), 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25 during the calendar year.

40. As set forth at EPCRA § 313(f), 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years subsequent to and including 1987.

41. Hydro is a person as defined in EPCRA § 329(7), 42 U.S.C. § 11049(7), and is the owner or operator as defined in EPCRA § 329(4), 42 U.S.C. § 11094(4), of the five facilities listed in Attachment A as having EPCRA § 313 violations (the Form R Facilities).

42. The Form R Facilities are in a covered SIC Code, 3341.

43. Hydro has had ten or more full-time employees at the Form R Facilities.



44. Lead, copper, manganese, and diisocyanates are toxic chemicals listed pursuant to EPCRA § 313(c), 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65.
45. Based on information supplied by Hydro, it manufactured, processed, or otherwise used lead, copper, manganese, and diisocyanates in excess of the EPCRA threshold reporting quantities at the Form R Facilities.
46. Hydro failed either to submit a Form R or to timely submit all required information regarding lead, copper, manganese, and diisocyanates on Form Rs submitted to EPA for the Form R Facilities for the years 2000-2006 and to the states listed in Attachment A, by July 1<sup>st</sup> for the preceding calendar year.
47. Based on information supplied by Hydro, EPA has determined that Hydro's failure to submit a complete Form R for the calendar years and above-referenced toxic chemicals for the Form R Facilities by July 1<sup>st</sup> of each following year is a violation of EPCRA § 313, 42 U.S.C. § 11023, and of the requirements of 40 C.F.R. Part 372, as described more fully in Attachment A.

#### RCRA Requirements

48. Hydro is a person as defined in RCRA § 1004(15), 42 U.S.C. § 6903(15), and as defined in Michigan Administrative Code (MAC) R. 299.9106, 224 Kentucky Administrative Rule (KAR) 01:010, and New York Compilation of Codes, Rules and Regulations, (N.Y. Comp. Codes R. & Regs.) Title 6 § 370.2.
49. Hydro is the owner and operator, as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in MAC R. 299.9106, 224 KAR 01:010, and 6 N.Y. Comp. Codes R. & Regs. § 370.2, of the three facilities identified in Attachment A as having RCRA violations (the RCRA Facilities).
50. Hydro is a generator of hazardous waste at the RCRA Facilities within the meaning of RCRA § 3002, 42 U.S.C. § 6922, and 40 C.F.R. § 260.10, as incorporated by reference in MAC R. 299.9104, 224 KAR 01:010, and 6 N.Y. Comp. Codes R. & Regs. § 370.2. Hydro stores hazardous waste at the RCRA Facilities, and is subject to the requirements of 40 C.F.R. Parts 264, 265, and 270, as referenced in MAC R. 299.11103, 401 KAR 30:005, and 6 N.Y. Comp. Codes R. & Regs. § 370-1.
51. Pursuant to Sections 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference in MAC R. 299.9501, 401 KAR 38:010, and 6 N.Y. Comp. Codes R. & Regs. § 373-1.2, no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.

52. Based on information provided by Hydro, the RCRA Facilities have not obtained permits, pursuant to RCRA § 3005(a), 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference in MAC R 299.9501, 401 KAR 34:020, and 6 N.Y. Comp. Codes R. & Regs. § 373-1.2, for the storage of hazardous waste. In addition, the facilities did not have interim status pursuant to RCRA § 3005(e), 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference in MAC R. 299.9601, 401 KAR 35:010-350, and 6 N.Y. Comp. Codes R. & Regs. § 373-1.2.

53. Pursuant to 40 C.F.R. § 262.34(a), as incorporated by reference in 6 N.Y. Comp. Codes R. & Regs. § 373-1.1(d), 401 KAR 32:030, and MAC R. 299.9306, generators of hazardous waste that accumulate hazardous waste in containers, tanks, drip pads, or containment buildings on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, if the hazardous waste is stored in accordance with the conditions prescribed in that section.

54. Based on information provided to EPA by Hydro, EPA has determined that Hydro failed to meet certain conditions under 40 C.F.R. § 262.34(a), as incorporated by reference in 6 N.Y. Comp. Codes R. & Regs. § 373-1.1(d). Specifically, Hydro failed to have an adequate contingency plan and failed to conduct daily inspections of hazardous waste storage tanks, in violation of 40 C.F.R. § 265.195(b), and 6 N.Y. Comp. Codes R. & Regs. § 373-3.4 and § 373-3.10(f), at its Ellenville, NY facility, as more fully described in Attachment A.

55. Based on information provided to EPA by Hydro, EPA has determined that Hydro failed to meet certain conditions under 40 C.F.R. § 262.34(a), as incorporated by reference in 401 KAR 32:030, specifically, to conduct weekly inspections and document such inspections of its hazardous waste container/storage area, in violation of 40 C.F.R. § 265.174, 401 KAR 32:030, and 401 KAR 35:180, at its Henderson, KY facility, as more fully described in Attachment A.

56. Based on information provided by Hydro regarding its Kalamazoo, MI facility, EPA has determined that Hydro failed to meet certain conditions under 40 C.F.R. § 262.34(a), as incorporated by reference in MAC R. 299.9306. Specifically, EPA has determined that at its Kalamazoo, MI facility, Hydro failed to have an inspection plan for hazardous waste tanks and containers, failed to document its daily inspections, did not provide hazardous waste training, did not have an adequate contingency plan, did not equip hazardous waste tanks with adequate overfill protection, did not remove liquids in secondary containment areas within twenty-four (24) hours, and did not have a professional engineer certify hazardous waste tanks, in violation of 40 C.F.R. § 262.34(a), 40 C.F.R. § 265.195(g), MAC R. 299.9306, and MAC R. 299.9615, as more fully described in Attachment A.

57. EPA has determined that Hydro, having failed to meet the conditions for the generator exemption from RCRA's permitting requirements, has violated RCRA § 3005(a) and (e), 42 U.S.C. § 6925(a) and (e), by storing hazardous waste at the RCRA Facilities without a permit or interim status.

## CAA National Emission Standards for Hazardous Air Pollutants (NESHAP) Requirements

58. Hydro is a person as defined by CAA § 302(e), 42 U.S.C. § 7602(e).
59. Hydro is the owner and operator within the meaning of CAA § 111(a)(5) and § 112(a)(9), 42 U.S.C. § 7411(a)(5), 42 U.S.C. § 7412(a)(9), and 40 C.F.R. § 63.2, of the three facilities identified in Attachment A as having CAA violations (the CAA Facilities).
60. Pursuant to Section 112(b) of the CAA, 42 U.S.C. § 7412(b), Congress established a list of hazardous air pollutants, which includes dioxins and furans:
61. CAA § 112(c), 42 U.S.C. § 7412(c), authorizes the Administrator of EPA to publish a list of all categories and subcategories of major and area sources of these hazardous air pollutants.
62. The CAA Facilities are secondary aluminum production facilities and are major sources of hazardous air pollutants, specifically, dioxins and furans. As such, the CAA Facilities are subject to the requirements of CAA § 112, 42 U.S.C. § 7412, and the NESHAP requirements found at 40 C.F.R. Part 63, Subpart RRR which are the requirements for Secondary Aluminum Production.
63. 40 C.F.R. Part 63, Subpart RRR requires secondary aluminum smelters to conduct stack tests, create plans for operation and maintenance, monitor equipment, and keep records on emissions from secondary aluminum production facilities.
64. Based on information provided by Hydro, EPA has determined that Hydro violated CAA § 112, 42 U.S.C. § 7412, and 40 C.F.R. Part 63, Subpart RRR at the CAA Facilities by having inadequate operation and maintenance plans, failing to have any or an adequate startup, shutdown and malfunction plan, failing to submit performance tests on time, and failing to monitor the quantity of flux, failing to keep records and calibrate equipment, as more specifically described in Attachment A.
65. Based on information provided by Hydro, it uses an industrial boiler and process heater at its Monett, MO facility.
66. Owners or operators of industrial boilers and process heaters that are located at a major source of Hazardous Air Pollutants (HAPs), are subject to the requirements of 40 C.F.R. Part 63, Subpart A, and 40 C.F.R. Part 63, Subpart DDDDD, the NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters.
67. 40 C.F.R. Part 63, Subpart A contains the general requirements for sources that are subject to the NESHAP. Specifically, 40 C.F.R. § 63.1 requires facilities to submit an initial applicability determination to determine whether or not a facility is subject to 40 C.F.R. Part 63, Subpart DDDDD.

68. 40 C.F.R. Part 63, Subpart DDDDD establishes emission limits and work practice standards for hazardous air pollutants from industrial, commercial and institutional boilers and process heaters. Specifically, facilities are required to submit an initial applicability determination in accordance with 40 C.F.R. § 63.1, as referenced in 40 C.F.R. § 63.7565, specifically, Table 10 to Subpart DDDDD.

69. Based on information provided by Hydro, EPA has determined that Hydro violated CAA § 112, 42 U.S.C. § 7412, and 40 C.F.R. Part 63, Subpart A, 40 C.F.R. § 63.1, as referenced in 40 C.F.R. § 63.7565, at one of the CAA Facilities when it failed to retain documentation of an initial applicability determination for a boiler and process heater, as more specifically described in Attachment A.

V. Conclusions of Law for Disclosures Identified in  
Attachment B that Failed to Meet All Audit Policy Conditions

CWA NPDES Requirements

70. Paragraphs 24-27 are hereby realleged and incorporated by reference.

71. Hydro is the owner or operator, as defined by 40 C.F.R. § 122.2, of the six facilities listed in Attachment B.

72. The states of Michigan, South Carolina, Kentucky, and Tennessee have been authorized by EPA to issue MSGPs that include requirements for the management of storm water by industrial users. Arizona did not have authorization to issue an MSGP at the time of the disclosed violations covering Hydro's Phoenix, Arizona facility. This facility was subject to the federal MSGP.

73. Hydro, as an industrial user, was required to seek coverage under the MSGP pursuant to CWA §§ 402(a) and (p), 33 U.S.C. §§ 1342(a) and (p). The MSGP authorizes storm water discharges associated with industrial activity into waters of the United States, including discharges to or through municipal separate storm sewer systems, subject to the conditions of the permit.

74. Pursuant to CWA §§ 402(a) and (p), 33 U.S.C. §§ 1342(a) and (p), and corresponding state regulations, Hydro sought coverage under the federal, Michigan, South Carolina, Kentucky, and Tennessee MSGPs for Hydro's facilities listed in Attachment B. As required by the applicable MSGP, industrial users must conduct annual comprehensive site inspections and evaluations, train employees, conduct semi-annual monitoring, conduct quarterly site inspections, maintain records, and develop and implement a SWPPP, which is designed to reduce storm water discharges.

75. Based on the information supplied by Hydro, EPA has determined that Hydro has violated the CWA at the facilities listed in Attachment B by failing to conduct annual comprehensive site inspections and evaluations, train employees, conduct semi-annual monitoring, conduct quarterly site inspections, and maintain records as required by CWA § 402(p), 33 U.S.C. § 1342(p), the CWA implementing regulations, and applicable MSGPs, as more fully described in Attachment B.

76. EPA has determined that the disclosures of CWA MSGP violations at the six facilities listed in Attachment B failed to meet Condition 2 of the Audit Policy, which requires voluntary discovery. EPA has determined that Hydro was obligated to discover those violations under the applicable CWA MSGPs, as part of the annual comprehensive site inspection and evaluation requirements in the permits. As a result, EPA has assessed a gravity-based penalty, as well as economic benefit for these violations.

#### CWA Pretreatment Standard Requirements

77. Hydro is a person as defined by CWA § 502, 33 U.S.C. § 1362(5).

78. Pursuant to CWA § 307, 33 U.S.C. § 1317, EPA promulgated general pretreatment regulations for existing and new sources of pollution at 40 C.F.R. Part 403, and pretreatment regulations for the aluminum forming category, as set forth at 40 C.F.R. Part 467. This category regulates the discharge of zinc, among other pollutants, from facilities that manufacture aluminum.

79. The term Publicly Owned Treatment Works (POTW) means a treatment works as defined at CWA § 212(2)(A), 33 U.S.C. § 1292(2)(A), which is owned by a state or municipality, as defined at CWA § 502(4), 33 U.S.C. § 1362(4). This definition includes any devices and systems used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances, only if they convey wastewater to a POTW treatment plant. The term also means the municipality which has jurisdiction over the indirect discharges to and the discharges from such a treatment works, as defined in 40 C.F.R. § 403.3(q).

80. Pursuant to 40 C.F.R. § 403.3(i), the term indirect discharge or discharge means the introduction of pollutants into a POTW from any non-domestic source regulated under CWA § 307(b), (c) or (d), 33 U.S.C. § 1317(b), (c) or (d).

81. Pursuant to 40 C.F.R. § 403.3(j), the term industrial user or user means a source of indirect discharge.

82. The term control authority is defined in 40 C.F.R. § 403.3(f) as (1) the POTW, if the POTW's submission for its pretreatment program has been approved in accordance with the requirements of 40 C.F.R. § 403.11; or (2) the approval authority, as defined at 40 C.F.R. § 403.3(c), if the submission has not been approved.

83. Hydro owns and operates the facility identified in Attachment B as having pretreatment violations (the Pretreatment Facility), and Hydro is an industrial user as defined at 40 C.F.R. § 403.3(j).

84. The City of Wawarsing, NY owns and operates the POTW to which the Pretreatment Facility discharges pollutants.

85. The City of Wawarsing, NY has a pretreatment program that has not been approved by EPA. Therefore, pursuant to 40 C.F.R. § 403.3(f), EPA Region 2 is the control authority.

86. Hydro was required to submit a semi-annual monitoring report demonstrating compliance with the categorical pretreatment standards required under 40 C.F.R. § 467 to the appropriate control authority for the Pretreatment Facility, in this instance EPA Region 2, pursuant to the reporting requirements set by 40 C.F.R. § 403.12(a).

87. Based upon information provided by Hydro, EPA has determined that Respondents did not provide the necessary reports to the appropriate entity (EPA Region 2), instead providing the reports to the City of Warwarsing, NY. Such action violated 40 C.F.R. § 403.12(a).

88. Hydro is required under 40 C.F.R. § 467 to document baseline and initial facility reports, and to calculate data using a production or mass-based approach for certain chemical parameters.

89. Based on information provided by Hydro, EPA has determined that Hydro failed to document the submittal of baseline and initial compliance reports and failed to submit semi-annual compliance reports to the appropriate control authority. Furthermore, EPA has determined that Hydro failed to calculate the required data using a production or mass-based approach for chromium, cyanide, zinc, aluminum, oil, grease and total toxic organics, as required by 40 C.F.R. § 467. Finally, EPA has determined that Hydro did not provide data on the pollutant zinc to the appropriate control authority. As such, EPA has determined that Hydro violated CWA § 307(d), 33 U.S.C. § 1317(d), and 40 C.F.R. §§ 403.12 and 467, as more fully described in Attachment B.

90. EPA has determined that the disclosures of CWA Pretreatment violations at Hydro's Ellenville, NY facility failed to meet Condition 5 of the Audit Policy which requires correction of a violation within 60 days of discovery. Hydro did not correct the violations until April of 2007, 18 months after discovery. As a result, EPA has assessed a gravity-based penalty, as well as economic benefit for these violations.

## VI. Civil Penalty

91. EPA agrees, based upon the facts and information submitted by Hydro, and upon Hydro's certification herein to the veracity of this information, that Hydro has satisfied all of the conditions set forth in the Audit Policy for those violations described in Attachment A, and thereby qualifies for a 100% reduction of the gravity component of the civil penalty that otherwise could be assessed for these violations. Complainant alleges that the gravity component of the civil penalty for the violations described in Attachment A would otherwise be initially calculated to be \$3,813,593. EPA alleges that this gravity component is potentially assessable against Hydro for the violations described in Attachment A. However, pursuant to the Audit Policy, EPA will waive 100% of the gravity-based penalties that could otherwise be assessed for such violations.

92. Under the Audit Policy, EPA reserves the right to collect any economic benefit that may have been realized as a result of noncompliance. Based on information provided by Hydro and use of the Economic Benefit (BEN) computer model for the violations described in Attachment A, EPA has determined that Hydro obtained an economic benefit of \$52,384 as a result of its noncompliance in this matter for the violations in Attachment A. Pursuant to the Audit Policy, EPA will assess a penalty equivalent to the economic benefit of \$52,384 for the violations listed in Attachment A.

93. EPA has determined, based upon the facts and information submitted by Hydro, that Hydro failed to satisfy either Condition 2 or Condition 5 of the Audit Policy for those violations described in Attachment B. As such, those violations do not qualify for 100% reduction of the gravity component of the civil penalty. EPA has calculated the gravity component of the civil penalty by applying the appropriate CWA penalty factors, and using the Draft Supplemental Guidance to the 1995 Interim CWA Settlement Policy for Violations of the Industrial Storm Water Requirements (March 5, 2007), and the Interim CWA Settlement Policy (March 1, 1995). EPA alleges that the gravity component of the civil penalty for the violations described in Attachment B is \$45,000. EPA alleges that this gravity component is assessable against Hydro for such violations.

94. Based on information provided by Hydro and use of the BEN computer model for the violations described in Attachment B, EPA has determined that Hydro obtained an economic benefit of \$21,981 as a result of its noncompliance in this matter for the violations in Attachment B. EPA will assess a penalty equivalent to the economic benefit of \$21,981 for the violations listed in Attachment B.

95. The total civil penalty agreed upon by the parties for settlement purposes is \$119,365. This amount is comprised of economic benefit of \$52,384 and \$21,981 that Hydro gained as a result of its noncompliance for disclosures listed in Attachments A and B, respectively. In addition, EPA is assessing a gravity component of \$45,000 for the disclosures listed in Attachment B that failed to satisfy the Audit Policy.

96. Except as otherwise provided in this CAFO, compliance with the CAFO shall fully and finally resolve Hydro's civil liability for the violations described in Attachment A and Attachment B to the CAFO.

## VII. Terms of Settlement

97. In full and final satisfaction of the allegations in the CAFO, and in consideration of each provision of this CAFO, Hydro agrees to pay ONE HUNDRED and NINETEEN THOUSAND AND THREE HUNDRED AND SIXTY-FIVE dollars (\$119,365) in satisfaction of the civil penalty.

98. For payment of the civil penalties related to the CAA, CWA NPDES, RCRA and EPCRA violations, Hydro shall pay the amount of \$116,813 within thirty (30) days of the issuance of the Final Order using one of the following instructions:

1. Via U.S. Postal Service regular mail of a certified or cashiers check, made payable to the United States Treasury, sent to the following address:

United States Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
Post Office Box 979077  
St. Louis, MO 63197-9000

2. Via overnight delivery of a certified or cashiers check, made payable to the United States Treasury, sent to the following address:

US Environmental Protection Agency  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

The U.S. Bank customer service contact for both regular mail and overnight delivery is Natalie Pearson, who may be reached at 314-418-1028.

3. Via electronic funds transfer (EFT) to the following account:

Federal Reserve Bank of New York  
ABA No.: 021030004  
Account No.: 68010727



SWIFT address: FRNYUS33

33 Liberty Street

New York NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727

Environmental Protection Agency Hydro Docket No. HQ-CAA-2009-8002, HQ-CWA-2009-8002, HQ-RCRA-2009-8002, and HQ-EPCRA-2009-8002."

The Federal Reserve customer service contact may be reached at 212-720-5000.

4. Via automatic clearinghouse (ACH), also known as Remittance Express (REX), to the following account:

US Treasury REX/Cashlink ACH Receiver

ABA: 051036706

Account No.: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 - checking

5700 Rivertech Court

Riverdale, MD 20737

The Finance Center customer service contact, Jesse White, may be reached at 301-887-6548.

5. Via on-line payment (from bank account, credit card, debit card):

Website: [www.pay.gov](http://www.pay.gov)

Enter "SFO 1.1" in the search field.

Open the form and complete the required fields (marked with an asterisk).

Under "Type of Payment," choose "Civil Penalty." Under "Invoice#" type

"Hydro, Docket No. HQ-CAA-2009-8002, HQ-CWA-2009-8002, HQ-RCRA-2009-8002, and HQ-EPCRA-2009-8002" into the "Court # or Bill #" subfield.

Leave the other subfields blank. Under "Installments?" choose "No."

Under "Region," type "HQ."

The check or the wire transfer shall bear the case docket number Hydro Docket No. HQ-CAA-2009-8002, HQ-CWA-2009-8002, HQ-RCRA-2009-8002, and HQ-EPCRA-2009-8002.

99. No later than 30 days after the effective date of the Final Order, Hydro shall pay the amount of \$2,552 to resolve the civil penalties related to the CWA SPCC violations, by means of a cashier's or certified check, or by electronic funds transfer (EFT). If paying by check, Hydro shall submit a cashier's or certified check, payable to "Environmental Protection Agency," and bearing the notation "OSLTF - 311." Hydro shall reference the settlement name, In the Matter

of Hydro, Docket No. HQ-CWA-2009-8002. If Hydro sends payment by check, the payment shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties, Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

If paying by EFT, Hydro shall transfer \$2,552 to:

Federal Reserve Bank of New York  
ABA 021030004  
Account 68010727  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the EFT message shall read "D 68010727 Environmental Protection Agency." In the case of an international transfer of funds, Hydro shall use SWIFT address FRNYUS33.

Hydro shall forward evidence of the checks, wire transfers, and/or internet-based payments to EPA, within five days of payment, to the attention of:

Mr. Michael Calhoun  
Special Litigation and Projects Division (2248-A)  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave, N.W.  
Ariel Rios Building, Room 3119C  
Washington, DC 20460

Hydro may also send evidence of payment via electronic mail to EPA's contact, noted above, at [calhoun.michael@epa.gov](mailto:calhoun.michael@epa.gov).

100. Hydro's obligations under this Agreement shall end when it has paid the civil penalties as required by this Agreement and the Final Order.

101. For the purposes of state and federal income taxation, Hydro shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to the Final Order. Any attempt by Hydro to deduct any such payments shall constitute a violation of this Agreement.

102. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States, and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of the Final Order if the penalty is not paid by the date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge of 12 percent (12%) per year compounded annually will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

#### VIII. Severability and Public Comment

103. The parties acknowledge that the settlement portions of this Agreement which pertain to the CWA violations are, pursuant to CWA § 311(b)(6)(C)(i), 33 U.S.C. § 1321(b)(6)(C)(i), CWA § 301(a), 33 U.S.C. § 1311 (a), and CWA § 402, 33 U.S.C. § 1342, subject to public notice and comment requirements. Furthermore, the parties acknowledge and agree that at that time, EPA will also provide notice of the CAA, RCRA, and EPCRA portions of this Agreement. Should EPA receive comments regarding the issuance of a Final Order assessing the civil penalty agreed to in Paragraph 97, EPA shall forward all such comments to Hydro within ten days of the receipt of public comments.

104. As part of this Agreement, and in satisfaction of the requirements of the Audit Policy, Hydro has certified to certain facts. The parties agree that should EPA receive information that proves or demonstrates that these facts are other than as certified by Hydro, the portion of this Agreement pertaining to the affected facilities, including mitigation of the proposed penalty, may be voided or this entire Agreement may be declared null and void at EPA's election, and EPA may proceed with an enforcement action.

105. The parties agree that Hydro reserves all of its rights should this Agreement be voided in whole or in part. The parties further agree that Hydro's obligations under this Agreement will cease should this Agreement be rejected by the Agency's Environmental Appeals Board (EAB); provided, however, that in the event that the EAB expresses any objections to, or intent to reject, this Agreement, the parties agree that they shall exercise their mutual best efforts to address and resolve the EAB's objections.

#### IX. Reservation of Rights

106. The Final Order, upon issuance by the EAB, and upon payment by Hydro of the civil penalty in Paragraph 97, shall resolve the claims for federal civil penalties as alleged in this Agreement. Nothing in this Agreement or Final Order shall be construed to limit the authority of EPA and/or the United States to undertake any action against Hydro, in response to any condition which EPA or the United States determines may present an imminent and substantial endangerment to public health, welfare, or the environment. Furthermore, except as specified in this paragraph, issuance of the Final Order does not constitute a waiver by EPA and/or the United States of its right to bring an enforcement action, either civil or criminal, against Hydro for any violation of federal or state statute, regulation, order or permit that is not the subject of this Agreement.

#### X. Other Matters

107. Each Party shall bear its own costs and attorney fees in this matter.

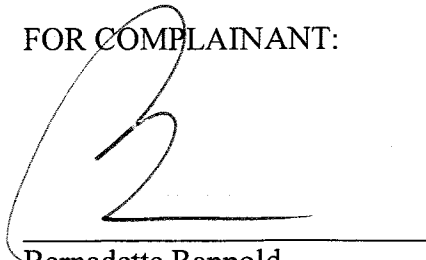
108. The provisions of this Agreement and the Final Order, when issued by the EAB, shall apply to and be binding on the Complainant and Hydro, as well as Hydro's officers, agents, successors and assigns. Any change in ownership or corporate status of Hydro, including, but not limited to, any transfer of assets or real or personal property shall not alter Hydro's responsibilities under this Agreement, including the obligation to pay the civil penalty referred to in Paragraph 97.

109. Nothing in this Agreement shall relieve Hydro of the duty to comply with all applicable provisions of the CAA, CWA, EPCRA, and RCRA, or other federal, state, or local laws or regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws, nor shall it be construed to be a ruling on, or a determination of, any issue related to any federal, state, or local permit.

110. Except as provided in Paragraph 105, Hydro waives any rights it may have to contest the allegations contained herein and its right to appeal the proposed Final Order accompanying this Agreement.

111. The undersigned representatives of each Party to this Agreement certify that each is duly authorized by the Party whom he represents to enter into these terms and bind that Party to it.

FOR COMPLAINANT:

A handwritten signature in dark ink, appearing to be 'B Rappold', written over a horizontal line.

Bernadette Rappold

Director

Special Litigation and Projects Division

U.S. Environmental Protection Agency

11/25/09  
Date

FOR HYDRO



Keith Jones, President  
Hydro Aluminum Precision Tubing  
North America, LLC

12-7-09

Date

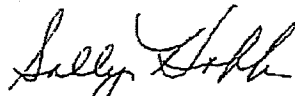
Sally Hobbs, Vice President  
Human Resources and Environment,  
Health and Safety  
Hydro Aluminum North America, Inc.

Date

FOR HYDRO

Keith Jones, President  
Hydro Aluminum Precision Tubing  
North America, LLC

Date

  
Sally Hobbs, Vice President  
Human Resources and Environment,  
Health and Safety  
Hydro Aluminum North America, Inc.

12-18-09  
Date

## ATTACHMENT A

### HYDRO VIOLATIONS THAT HAVE RECEIVED AUDIT POLICY CREDIT

#### CWA SPCC VIOLATIONS AND FACILITIES

Location	Violation Description	Violation Citation(s)	Duration of Violation
Belton, SC	No SPCC training in 2004	40 C.F.R. § 112.7(f)	1/1/04-8/13/05
Henderson, KY	No quarterly inspection of emergency response equipment and materials per SPCC Plan;	40 C.F.R. § 112.7(e)	6/30/02-3/28/05
	No records maintained per SPCC Plan;	40 C.F.R. § 112.8(d)(4)	6/30/02-3/28/05
	No annual SPCC training for 2000, 2001, 2002, and 2004	40 C.F.R. § 112.7(f)	1/1/00-12/31/02 1/1/04-12/31/04
Kalamazoo, MI	No SPCC plan	40 C.F.R. § 112.3 40 C.F.R. § 112.7	9/15/00-9/15/05
Monett, MO	No weekly inspection records of petroleum storage per SPCC Plan	40 C.F.R. § 112.7(e) 40 C.F.R. § 112.8(d)(4)	7/15/00-7/15/05



**ATTACHMENT A continued**

**CWA MSGP SWPPP VIOLATIONS AND FACILITIES**

<b>Location</b>	<b>Violation Description</b>	<b>Violation Citation(s)</b>	<b>Duration of Violation</b>
North Liberty, IN Henry Street	Failure to obtain coverage under an MSGP	40 C.F.R. § 122.26 327 IND. ADMIN CODE 5-4-6	9/8/00- 9/8/05
North Liberty, IN S. Main Street	Failure to file a No Exposure Certification	40 C.F.R. § 122.26 327 IND. ADMIN CODE 5-4-6	9/8/00- 9/8/05
Cassville, MO	Failure to obtain coverage under an MSGP	40 C.F.R. § 122.26 MO. CODE REGS ANN. title 10 Section 206.200	7/14/00- 7/14/05
Sidney, OH Stolle Ave	Failure to obtain coverage under an MSGP	40 C.F.R. § 122.26 OHIO ADMIN CODE 3745-39-04	7/31/00- 7/31/05
Sidney, OH Ross Street	Failure to file a No Exposure Certification	40 C.F.R. § 122.26(g) OHIO ADMIN CODE 3745-39-04(G)	9/15/00- 9/15/05
Monett, MO	No annual operating reports completed and submitted to state;	Expired Permit # MO-R203277 and MO General Permit # MO-R203000	10/28/99- 3/8/05
	Eight quarterly monitoring reports between 2002-2003 submitted approximately three months late	MO General Permit # MO-R20377	5/20/02- 2/19/04

**ATTACHMENT A continued**

**EPCRA § 312 VIOLATIONS AND TIER II FACILITIES**

<b>Location</b>	<b>Violation Description</b>	<b>Violation Citation(s)</b>	<b>Duration of Violation</b>
Adrian, MI	No EPCRA § 312 Tier II reports for hydraulic oil	40 C.F.R. § 355.30 40 C.F.R. § 370.25	3/1/01-8/11/05
Kalamazoo, MI	No EPCRA § 312 Tier II reports for caustic soda	40 C.F.R. § 355.30 40 C.F.R. § 370.25	3/1/01-2/2/06
North Liberty, IN S. Main Street	No EPCRA § 312 Tier II reports for sulfuric acid, hydrofluoric acid and caustic soda	40 C.F.R. § 355.30 40 C.F.R. § 370.25	8/15/00-8/15/05
Rockledge, FL	No EPCRA § 312 Tier II reports for caustic soda	40 C.F.R. § 355.30 40 C.F.R. § 370.25	3/1/01-9/13/05
Sidney, OH	No EPCRA § 312 Tier II reports for argon	40 C.F.R. § 355.30 40 C.F.R. § 370.25	8/15/00-8/15/05

**ATTACHMENT A continued**

**EPCRA § 313 VIOLATIONS AND FORM R FACILITIES**

<b>Location</b>	<b>Violation Description</b>	<b>Violation Citation(s)</b>	<b>Duration of Violation</b>
Adrian, MI	No EPCRA § 313 Form R reports for copper or lead	40 C.F.R. § 372.30(a)	7/1/04-9/15/06
Belton, SC	No EPCRA § 313 Form R reports for diisocyanates	40 C.F.R. § 372.30(a)	11/2/00-11/2/05
Monett, MO	No EPCRA § 313 Form R reports for copper or lead	40 C.F.R. § 372.30(a)	7/1/01-2/26/06
Rockledge, FL	EPCRA § 313 Form R report for manganese was submitted 72 days late	40 C.F.R. § 372.30(a)	7/1/05-9/13/05
St Augustine, FL	No EPCRA § 313 Form R reports for lead	40 C.F.R. § 372.30(a)	2/1/02-8/15/05

**ATTACHMENT A continued**

**RCRA VIOLATIONS AND FACILITIES**

<b>Location</b>	<b>Violation Description</b>	<b>Violation Citation(s)</b>	<b>Duration of Violation</b>	<b>Corresponding State Violation Citation(s)</b>
Ellenville, NY	Inadequate hazardous waste contingency plan	40 C.F.R. § 262.34 and 40 C.F.R. § Part 265, Subpart D	3/15/02-12/16/05	NY Code Title 6 § 373-1.1(d) and § 373-3.4
	Missed daily inspections of hazardous waste (caustic) storage tank	40 C.F.R. § 265.195(b)	3/15/02-1/23/03	NY Code Title 6 § 373-10(f)
Henderson, KY	No weekly hazardous waste container/storage areas inspections done or documented	40 C.F.R. § 262.34 40 C.F.R. § 265.174	6/2/04-1/17/05	401 KAR 32:030 and 35:180
Kalamazoo, MI	No inspection plan for hazardous waste tanks and containers; daily inspections done, but not documented	40 C.F.R. § 262.34 40 C.F.R. § 265.195(g)	1/1/00-6/1/05	MAC R. 299.9306 and 299.9615(1)
	No job-specific or hazardous waste training provided	40 C.F.R. § 262.34(d)(5)	1/1/02-12/31/04	MAC R. 299.9306(4)
	Inadequate hazardous waste contingency plan	40 C.F.R. § 265.34 and 40 C.F.R. Part 265, Subpart D	1/21/05-7/31/05	MAC R. 299.9306
	Hazardous waste tanks not equipped with overfill protection; liquids in secondary containment not removed within 24 hours	40 C.F.R. § 262.34 40 C.F.R. § 265.194 40 C.F.R. § 265.196	10/1/01-8/31/05	MAC R. 299.9615
	Spent caustic tank not certified by professional engineer	40 C.F.R. § 265.192	10/1/01-9/28/05	MAC R. 299.9615

**ATTACHMENT A continued**

**CAA VIOLATIONS AND FACILITIES**

<b>Location</b>	<b>Violation Description</b>	<b>Violation Citation(s)</b>	<b>Duration of Violation</b>
Commerce, TX	Inadequate and late Operation, Maintenance, and Monitoring Plan (OMM) and Startup, Shutdown, and Malfunction Plan (SSM)	40 C.F.R. § 63.1510(b) 40 C.F.R. § 63.6(e)(3)	9/21/04-8/31/05
Monett, MO	No documentation of initial applicability determination for boiler and process heater	40 C.F.R. Part 63, Subparts A and DDDDD	3/12/05-10/5/05
Phoenix, AZ	No SSM Plan;	40 C.F.R. § 63.6(e)(3)	3/24/04-2/10/06
	OMM Plan submitted late;	40 C.F.R. § 63.1510(b)	3/24/04-2/10/06
	OMM Plan incomplete, inadequate, and not followed;	40 C.F.R. § 63.1511	3/24/04-2/10/06
	Initial performance test submitted late;	40 C.F.R. § 63.1515	2/24/03-2/5/04
	No monitoring of quantity of flux injected to in-line fluxer;	40 C.F.R. § 63.1506(n)	3/24/04-2/10/06
	No flux charge records kept;	40 C.F.R. § 63.1510(j)	3/24/04-2/10/06
	No calibration of measuring device;	40 C.F.R. § 63.1517	3/24/04-2/10/06
	Load scale not calibrated as required by NESHAP or by OMM Plan for 1 year	40 C.F.R. § 63.1510(b)	3/24/04-3/1/05

**ATTACHMENT B**  
**HYDRO VIOLATIONS THAT DID NOT RECEIVE AUDIT POLICY CREDIT**

**CWA MSGP VIOLATIONS AND FACILITIES**

<b>Location</b>	<b>Violation Description</b>	<b>Duration of Violation</b>	<b>MSGP Citation(s)</b>
Adrian, MI	No comprehensive site inspection	2000-2002 & 2004	MI General Permit #MIS510000 Part 1 Sections C.2 and C.4
Kalamazoo, MI	No comprehensive site inspection;  No training program in SWPPP; No annual employee training	2002, 2003 & 2004  2001-2004  2001-2004	MI General Permit #MIS119000 Part 1 Sections C.2 and C.4
Belton, SC	No semi-annual monitoring; No annual comprehensive evaluation of site compliance	2000-2004 2000-2004	NPDES General Permit No SCR000000, Part 3; Section C.3.3; C.3.4; C.4; C.3.4; C.5; C.3.4.D
Henderson, KY	No semi-annual monitoring; No annual comprehensive compliance evaluations; No quarterly site inspections	2002-2004 2002-2004 2002-2004	KPDES General Stormwater Permit #KYR20, Part III.A; Part IV; Part IV. D.4; Part IV.E
Phoenix, AZ	No annual comprehensive site compliance evaluations   Failure to notify state of name change	2002, 2003 & 2004   2001-2005	2000 NPDES Multi-Sector General Stormwater Permit Sector AA, 6.AA.3.7

**ATTACHMENT B**  
**HYDRO VIOLATIONS THAT DID NOT RECEIVE AUDIT POLICY CREDIT**

**CWA MSGP VIOLATIONS AND FACILITIES**

<b>Location</b>	<b>Violation Description</b>	<b>Duration of Violation</b>	<b>MSGP Citation(s)</b>
Fayetteville, TN	No quarterly visual inspection records;	2002-2004	TN Multi-Sector General Permit TNR0500000 Part IV and IV.C; IV.E.2.b; IV.E.b.9; VI.A.1; and Sector AA (Permit Tracking No. TNR0504051)
	No materials storage/handling areas inspection records maintained;	2002-2004	
	Six quarterly monitoring reports not maintained;	2002-2004	
	No annual employee training;	2002-2004	
	No annual comprehensive site compliance evaluations	2002-2004	

**CWA PRETREATMENT VIOLATIONS AND FACILITY**

<b>Location</b>	<b>Violation Description</b>	<b>Duration of Violation</b>	<b>Violation Citation(s)</b>
Ellenville, NY	Failure to submit semi-annual compliance reports;	4/20/02-4/20/07	40 C.F.R. § 403.12(e) 40 C.F.R. § 467.35 40 C.F.R. § 467.53
	No documentation of baseline and initial compliance reports;	4/20/02-4/20/07	
	Monitoring parameters and reported limits were not production or mass based for chromium, cyanide, zinc, aluminum, oil, grease and total toxic organics and therefore did not demonstrate compliance with categorical pretreatment standards; and	4/20/02-4/20/07	
	No zinc testing done	4/20/02-4/20/07	